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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
11 February 1949

UNITED STATES OF AMERICA VS YUTAKA ODZAWA
UNITED STATES OF AMERICA VS KAORU OKUMA
UNITED STATES OF AMERICA VS NAOTADA FUJIHIRA
UNITED STATES OF AMERICA VS KIYOHISA NOTO
UNITED STATES OF AMERICA VS TSUNEHICO YAMAMOTO

Review of the Staff Judge Advocate

1. The attached record of trial of the Case of Yutaka Odazawa, Kaoru Okuma, Naotada Fujihira, Kiyohisa Noto, and Tsunehiko Yamamoto, tried at Yokohama, Japan, from 22 June 1948 to 6 July 1948, by a Military Commission appointed by paragraph 2, Special Orders Number 136, Headquarters Eighth Army, United States Army, dated 16 June 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Yutaka Odazawa
AGE: 39
RESIDENCE: Gunma-ken, Tonegun,
Shirasawa-mura, Sai 922
MARITAL STATUS: Married
RELATIVES: Wife, 1 Child, &
1 Brother
EDUCATION: Primary School, Naval
Gunner School.
VOCATION: Farmer
MILITARY CAREER: Japanese Navy
since 1929 - Discharged 17
January 1946; Highest rank:
Lieutenant Junior Grade

DATE OF CONFINEMENT: 22 January 1948
DATE OF ARRAIGNMENT: 22 June 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 22 June 1948 - 6
July 1948
DATE OF SENTENCE: 6 July 1948
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION: No.

NAME: Kaoru Okuma
AGE: 35
RESIDENCE: 735 Saijo-machi, Kamo-gun,
Hiroshima-ken
MARITAL STATUS: Married
RELATIVES: Wife, 1 Child, Father,
Mother, & 3 Brothers
EDUCATION: Naval Engineer Academy
VOCATION: Not Given
MILITARY CAREER: Japanese Navy since
25 March 1937 - Discharged 25
January 1946; Highest Rank:
Lieutenant Commander

DATE OF CONFINEMENT: 29 April 1948
DATE OF ARRAIGNMENT: 22 June 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 22 June 1948 - 6
July 1948
DATE OF SENTENCE: 6 July 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Naotada Fujihira
AGE: 37
RESIDENCE: Chiba-ken, Isumi-gun,
Azuma-mura, 420 Nittano
MARITAL STATUS: Married

DATE OF CONFINEMENT: 10 May 1948
DATE OF ARRAIGNMENT: 22 June 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 22 June 1948 - 6
July 1948

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RELATIVES: Wife, 1 Child, & Father
EDUCATION: Primary School, 8 years;
Naval Intendence School, 7 months
VOCATION: Farmer
MILITARY CAREER: Japanese Navy since
1 June 1929 - Discharged 18 January
1946; Highest rank: Ensign

DATE OF SENTENCE: 6 July 1948
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Kiyohisa Noto
AGE: 46
RESIDENCE: 414 1 Chome, Nishiokubo,
Shinjiku-ku, Tokyo-to
MARITAL STATUS: Married
RELATIVES: Wife, 2 Sons, Father, Mother,
3 Brothers, & 3 Sisters
EDUCATION: Graduate Naval Officers
Training School
VOCATION: Navy
MILITARY CAREER: Japanese Navy since
1920; Highest rank: Captain

DATE OF CONFINEMENT: 29 January 1947
DATE OF ARRAIGNMENT: 22 June 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 22 June 1948 - 6
July 1948
DATE OF SENTENCE: 6 July 1948
SENTENCE: CHL for 20 years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Tsunehiko Yamamoto
AGE: 28
RESIDENCE: Inatori-machi, Kamo-gun,
Shizuoka Prefecture; Inatori
Vocational School
MARITAL STATUS: Single
RELATIVES: Father, Mother, 2
Brothers, & 1 Sister
EDUCATION: Tokyo Agricultural
University
VOCATION: Assistant Professor, High
School
MILITARY CAREER: Japanese Navy since
October 1942 - Discharged 24
January 1946; Highest Rank:
Lieutenant

DATE OF CONFINEMENT: 30 April 1948
DATE OF ARRAIGNMENT: 22 June 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 22 June 1948 - 6
July 1948
DATE OF SENTENCE: 6 July 1948
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION: No

3. Synopsis of Charges, Pleas, Findings, and Legal Sufficiency:

Charges and Specifications:

Pleas:

Findings:

Legally
Sustained:

ODAZAWA:

Charge: Accused, at the times and
places set forth in the specifications
hereto attached, did violate the Laws
and Customs of War.

N G

G

Yes

Sp: That in or about June 1944, at
Kairiru Island, New Guinea, the
accused did willfully and unlawfully
kill Second Lieutenant Robert Thorpe,
an American Prisoner of War, by
beheading him. (As amended R 5)

N G

G

Yes

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OKUMA:

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Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. N G G Yes

Sp 1: That in or about June 1944, at Kairiru Island, New Guinea, the accused did willfully and unlawfully mistreat Second Lieutenant Robert Thorpe, an American Prisoner of War, by beating him. G G Yes

Sp 2: That in or about June 1944, at Kairiru Island, New Guinea, the accused did willfully and unlawfully order, cause, direct, and permit the beating of Second Lieutenant Robert Thorpe, an American Prisoner of War. G G Yes

Sp 3: That in or about June 1944, at Kairiru Island, New Guinea, the accused, did, with others, willfully and unlawfully participate in the unlawful killing of Second Lieutenant Robert Thorpe, an American Prisoner of War. N G G Yes

Sp 4: That in or about June 1944, at Kairiru Island, New Guinea, the accused did willfully and unlawfully order, cause, direct, and permit the unlawful killing of Second Lieutenant Robert Thorpe, an American Prisoner of War. N G G Yes

Sp 5: That in or about June 1944, at Kairiru Island, New Guinea, the accused did willfully and unlawfully order, cause, direct, and permit the unlawful desecration of the body of Second Lieutenant Robert Thorpe, an American Prisoner of War. N G N G

FUJIIHARA:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. N G G Yes

Sp 1: That in or about June 1944, on Kairiru Island, New Guinea, the accused did willfully and unlawfully mistreat Second Lieutenant Robert Thorpe, an American Prisoner of War, by beating him. N G G Yes

Sp 2: That in or about June 1944, on Kairiru Island, New Guinea, the accused did, with others, willfully and unlawfully participate in the unlawful killing of Second Lieutenant Robert Thorpe, an American Prisoner of War. N G G Yes

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NOTO:

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Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. G G Yes

Sp: That in or about June 1944, at Kairiru Island, New Guinea, the accused did willfully and unlawfully order, direct, cause, and permit the unlawful killing of Second Lieutenant Robert Thorpe, an American Prisoner of War. G G Yes

YAMAMOTO:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. N G G Yes

Sp 1: That in or about June 1944, on Kairiru Island, New Guinea, the accused did willfully and unlawfully mistreat Second Lieutenant Robert Thorpe, an American Prisoner of War, by beating him. N G G Yes

Sp 2: That in or about June 1944, on Kairiru Island, New Guinea, the accused did, with others, willfully and unlawfully participate in the unlawful killing of Second Lieutenant Robert Thorpe, an American Prisoner of War. N G G Yes

3. Summary of the Evidence:

a. In General:

About 27 May 1944, Second Lieutenant Robert Thorpe, an American pilot, was shot down over Kairiru Island, New Guinea. He swam ashore and was captured by the 27th Special Naval Base Force, a Japanese Naval Unit stationed there. He was brought to Headquarters, interrogated, beaten, used as a target for pistol practice, and beheaded (Exhibits 2, 3, 6, 8, 10, 11, 12, 13, 14).

The following personnel of the Unit and its Headquarters are mentioned in this review:-

Sato, Rear Admiral - Commanding Officer (a suicide) (Exs 2, 3, 6, 12).
Noto, Captain - Chief of Staff and Senior Staff Officer (Exs 2, 3, 6).
Okuma - Lieutenant Commander - Adjutant, Engineer Officer (Exs 6, 11; R117).
Yamamoto, Ensign (R 136) - Telephone orderly (Ex 12; R 138).
Odazawa, Lieutenant - Platoon Leader (Ex 12).
Fujihira, Chief Petty Officer - Liaison Officer (Ex 13); Intendance Off. (Ex 6).
Amenomori, Lieutenant - Chief Intendance Officer (Ex 6); Paymaster (Ex 3).
Kawada, Lieutenant - Adjutant (Ex 6).
Maruyama, Lieutenant Commander - Chief Surgeon (Ex 5).
Suzuki, W.O. - Medical Section (Ex 7).
Ogawa, Petty Officer - Medical Section (a suicide) (Exs 3, 7, 12).
Ushioji, Lieutenant Commander - Staff Officer and Area Company Commander (Ex 2).

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Kamezaki, Lieutenant - Paymaster (Ex 8).
Nagahara, Lieutenant - Observation Post (Ex 9).

Lieutenant Thorpe was identified from photographs (Exs 1, 6, 8; R 11, 26).

b. For the Prosecution:

(1) As to Specifications 1 and 2, Okuma; Specification 1, Fujihira; and Specification 1, Yamamoto:

(a) About noon a messenger came to Headquarters and announced the capture of the prisoner of war. Sato or Noto, or both, directed Okuma, assisted by Amenomori, to conduct the interrogation. Okuma and Amenomori awaited the arrival of the prisoner of war at the air raid shelter, about 50 to 150 meters from Headquarters, where the interrogation was to be conducted. About 12:30 to 1:00 p.m., Fujihira and two guards arrived with the prisoner of war at the air raid shelter. About thirty enlisted men and some officers were present. Okuma was the senior officer and in charge of the interrogation. It was completed about 3:00 p.m. (Exs 2, 3, 5, 6, 8, 9, 11, 12, 13, 14).

(b) Ushiogi stated that he was at the interrogation three or four minutes. He saw Okuma strike the prisoner of war three or four times with his hand across his face. The prisoner's face was bleeding and he had several cuts. He did not see anyone except Okuma strike the prisoner of war, but from the condition of his face, it was evident that the prisoner of war had been beaten before his (Ushiogi's) arrival (Ex 2). On cross-examination, he stated he saw only one cut on the prisoner's face; his face was not swollen; the blood on his face did not result from Okuma's slaps (R 12-14).

(c) Suzuki and Kamezaki stated they were at the interrogation for ten or fifteen minutes. No one beat the prisoner of war while they were there; but it was obvious that the prisoner of war had been beaten since his face was bruised and bleeding from a fresh cut (Ex 7, 8). Suzuki stated that during the interrogation Okuma announced that after the interrogation, the flyer was to be executed (Ex 7).

(d) Amenomori stated that when the interrogation was completed, Okuma turned to the people and announced that anyone who wanted to beat the flyer could go ahead and do so. He saw at least two or three immediately rush in and start to beat the prisoner of war about the head with their hands. The beating was still going on when he left (Ex 3).

(e) Kawada stated he saw Okuma strike the prisoner of war three or four times with a semi-clenched fist for refusing to answer questions. About twenty minutes after he left, Yamamoto told him at Headquarters that Okuma had told those present that if they wished to beat the prisoner of war, they could do so, and thereupon some of the personnel beat the prisoner of war (Ex 6). He (Kawada), thought he recalled that Amenomori struck the prisoner and Yamamoto told him that he (Yamamoto) had also hit him (R 35, 39, 40).

(f) Nagahara stated Yamamoto told him that the prisoner of war was beaten and slapped during the interrogation by Okuma, Yamamoto, and several others (Ex 9).

(g) Okuma stated he was the senior officer present at the interrogation and he was in charge. The prisoner of war was not answering his questions promptly, and he slapped him with the palm of his hand. After the conclusion of the interrogation, all the enlisted men rushed in and beat the prisoner of war. He was present during five minutes of this time, and they were hitting with open hands, fists, and wooden sticks. He remembered distinctly at least four or five enlisted men beating the prisoner of war. They were striking him on the back and face and there were some bruises on his back when he left. Noto had given him instructions to interrogate the prisoner of war, but gave no orders about having the prisoner of war beaten. He realized now that the beating of the prisoner of war was wrong, and he should have stopped it (Ex 11).

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(h) Yamamoto stated that no one beat the prisoner of war during the interrogation, but after it was finished. Okuma and a number of enlisted men proceeded to beat the flyer with their fists about the face, and perhaps bloodied his nose. He thought that Okuma said that if anyone wanted to beat the prisoner of war, they could do so. He did not think that he (Yamamoto) hit the prisoner of war (Ex 12).

(i) Fujihira stated that on completion of the interrogation, Okuma announced to the assembled group that the prisoner of war was going to die anyway, and anyone who wanted could beat him. He thought he (Fujihira) struck the prisoner of war in the face one or two times with his open hand. Okuma was in charge and, after his announcement, some officers, non-coms, enlisted men, and civilians beat the prisoner of war with open hands and fists, on the face, ears, side of head, and shoulders. The prisoner's temples were cut, and his face bleeding. The beating lasted about five minutes (Ex 13).

1 (2) As to Specification Noto: Specifications 3 and 4, Okuma: Specification 2, Fujihira: Specification 2, Yamamoto: Specification, Odazawa:

(a) Ushioji stated that Okuma reported the results of the interrogation to Sato. Noto came in and examined the report. He (Ushioji) asked what disposition would be made of the prisoner of war and Noto replied he would be executed. He (Ushioji) heard in the dining room that Odazawa was going to execute him. After lunch, Okuma and Yamamoto, followed by Odazawa with his sword, returned to Headquarters. Sato asked who was going to execute the prisoner of war and either Okuma or Yamamoto said Odazawa was going to do it. He (Ushioji) did not know whether Odazawa volunteered or was selected to be the executioner. Kawada came in and said that Noto had told him Odazawa would kill the prisoner of war. Okuma and Yamamoto were both busy fixing up their pistols. They seemed to be in good spirits. He (Ushioji) understood they were going to shoot the prisoner of war. Okuma, Yamamoto, and Odazawa then left for the execution scene (Ex 2, R 21). He (Ushioji) did not know whether Sato or Noto had issued the orders for the execution (R 22).

(b) Kawada stated Okuma reported to Noto, giving him the report of the interrogation. Sato was present and listening. Noto said, "I will have him (Okuma) dispose of the prisoner of war." Sato said nothing, but nodded his head. Noto turned toward Okuma and said, "Take the prisoner somewhere and do away with him any way that you want." The meaning was plain, he was to be executed. It was a direct order from Noto to Okuma. Nothing was said at the time, whether the prisoner of war was to be shot or be beheaded. Yamamoto and Okuma said they wanted to shoot the prisoner of war, and Noto said it would be O.K. He spoke without asking Sato. After Noto told Okuma to dispose of the prisoner of war, Okuma turned around and asked for a volunteer to behead the prisoner of war. They then left. Before leaving, Yamamoto sent his orderly to get his and Okuma's pistols. The orderly came back with the two pistols and gave them to Yamamoto. He (Kawada) said to Yamamoto, before he left, "Don't shoot this prisoner of war." Yamamoto said he was going to practice on him. In about two or three minutes, Odazawa came to Headquarters. He (Kawada) told him that Okuma had left to execute the prisoner of war and was looking for a volunteer to decapitate him. Odazawa said he would like to cut him, and left right after that (Ex 6; R 42).

(c) Okuma stated he reported the results of the interrogation to Noto. At lunch, Sato and Noto mentioned the disposal of the prisoner of war by execution. About 3:00 p.m., he saw Odazawa with his sword, and concluded that the prisoner of war was to be executed. He did not know whether any order had been given to Odazawa to behead the prisoner of war; but since Odazawa was a very bold fellow, he felt fairly certain that he had volunteered to be the executioner (Ex 11).

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(d) Yamamoto stated he and Okuma went to Headquarters and reported to Noto after the interrogation. Noto told them to take the prisoner of war out to the seashore and execute him. He (Yamamoto) stopped by his quarters and picked up his pistol because Noto told them to execute the prisoner of war. He did not know whether Noto had conferred with Sato before he ordered the execution (Ex 12).

(e) Odazawa stated that, at the air raid shelter, Okuma said the prisoner of war was going to be executed by order of the Commanding Officer. He (Odazawa) was to be the executioner. Okuma was his immediate commanding officer, and he had to take orders from him (Ex 14).

(f) Maruyama stated that Noto told him in his tent that the prisoner of war would be executed (Ex 5).

(g) Okuma returned to the air raid shelter and gave the enlisted men some orders. They led the prisoner of war to the scene of the execution. Odazawa accompanied them with his sword. When they arrived at the scene, the grave was already dug. The prisoner of war was brought near the grave and left standing. All the arrangements had been made. Okuma was the senior officer present and was in charge and directed all the proceedings (Exs 2, 3, 5, 7, 8, 11, 12, 13, 14).

(h) Okuma stated that he went up to Odazawa and asked him to wait a moment before he cut off the prisoner's head, as he wanted to practice shooting at the prisoner of war. Odazawa said all right, and he (Okuma) took his pistol and fired one shot at the prisoner's left foot. He intended to hit him in the ankle and this was a good opportunity to practice pistol marksmanship. He fired only one shot and missed. When he fired, he did not want to kill him, as Odazawa was to do the execution. Yamamoto fired two shots at the prisoner's legs, but he did not think he hit him. He had previously had a conversation with Yamamoto in which they agreed this would be a good opportunity to practice pistol shooting by firing at the legs prior to the execution. Yamamoto said, "I will kill you with my pistol", but he fired only at his ankle. Fujihira fired one shot at the prisoner's ankle. After he fired this shot, the prisoner of war staggered; it appeared the prisoner of war had been shot in the leg. Prior to firing, Fujihira said, "You have not done a good job and I will show you how to do it, as I am an expert." (Ex 11).

(i) Suzuki stated Fujihira took his pistol out of his holster and fired one shot, and struck the prisoner of war in the left leg, below the knee. There was blood on his pants leg from the shot (Ex 7). Two other officers fired; one hit the prisoner of war in the stomach; one missed. Odazawa said to shoot below the hips; because if he were shot above the hips, he would die (R 50).

(j) Yamamoto stated that Okuma, Fujihira, and he drew pistols and prepared to shoot the prisoner of war, when Odazawa said, "Shoot him below the knees. If you shoot him above the belt, it will be difficult to behead him." He (Yamamoto) then fired twice at the prisoner's shin. He thought one shot may have hit him. Okuma and Fujihira then each fired at the prisoner of war. He believed the prisoner of war was still standing after the shooting (Ex 12).

(k) Fujihira stated Okuma fired first. He thought one of his shots hit the prisoner of war in the leg, and thought he saw blood. Someone said the firing would be below the knees, so that the prisoner of war would not be killed and could later be decapitated. He fired after Okuma. Before Okuma fired, he (Fujihira) asked permission to fire also. Okuma said it was all right. He asked permission because Okuma was the senior present and in charge of everything. Yamamoto and Okuma cautioned him to shoot below the knees.

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He felt sorry for the prisoner of war and purposely missed him. He fired only one shot. Yamamoto fired after him; one of Yamamoto's shots hit the prisoner of war in the knee and blood welled out (Ex 13).

(l) Odazawa stated Okuma was giving the orders and told him that before he beheaded the prisoner of war, he was to be shot first. Okuma fired one shot first, and Yamamoto also fired a shot. He was fairly certain that both shots struck the prisoner of war. After the two shots, the prisoner of war fell to his knees (Ex 14).

(m) Kamezaki stated Yamamoto and Okuma fired at the prisoner of war with their pistols. After one of the shots, the prisoner of war fell to his knees. They aimed at his legs. He thought Fujihira fired a shot (Ex 8; R 59). The officers were about ten meters from the prisoner of war when they fired (R 65).

(n) The flyer was placed in the kneeling position at the edge of the grave. Odazawa said to the flyer, "I am going to behead you under orders" (R 52); "I am going to kill you" (Ex 8); "I, Odazawa, will now proceed to execute you" (Ex 12); "You will first go to Paradise, and I will follow you later on" (Ex 13); "Due to the war, it cannot be helped; I will dispose of you" (Ex 14). He then poured water on the prisoner's neck and on his samurai sword. With one blow of the sword, he struck the prisoner of war in the back of the neck. The head was not completely severed, but was hanging by a small bit of flesh. After the blow, the prisoner of war fell into the grave (Exs 7, 8, 11, 12, 13, 14).

(o) After the execution, Okuma and Yamamoto reported to Sato at Headquarters that they had shot the prisoner of war and that Odazawa had beheaded him (Ex 2; R 19). The next day, Okuma told Amenomori that he (Okuma), Yamamoto, and Fujihira had shot the prisoner of war with their pistols, below the knees, and the flyer had then been beheaded (Ex 3). That evening, Okuma and Yamamoto stated that, prior to the beheading by Odazawa, Okuma, Yamamoto, and Fujihira had fired at the legs of the prisoner of war with their pistols; that when the prisoner of war was brought there it was agreed that first they would fire at the prisoner of war, aiming at his legs, and Odazawa would behead him. The prisoner of war was to be fired at in the legs so that he would fall and be in a position to be easily beheaded by Odazawa (Ex 5). After the execution, either Yamamoto or Okuma told Kawada that when they (Yamamoto and Okuma) were going to shoot the prisoner of war, Odazawa told them not to shoot the prisoner of war in the upper part of his body, as he wanted to decapitate him. They aimed at the prisoner's legs. After the shooting, the prisoner of war fell into a kneeling position and Odazawa decapitated him (Ex 6). After the execution Yamamoto told Nagahara that the prisoner of war was shot at by him (Yamamoto), Okuma, and Fujihira, one of the shots hitting him in the leg, and that following this, the prisoner of war was decapitated by Odazawa (Ex 9).

(p) At a conference in October or November 1945, after the war, attended by Sato, Noto and several others, Sato and Noto ordered all to maintain silence concerning the executions at Kairiru and, if questioned, to state the prisoner of war had died of disease (Exs 3, 5, 6, 9, 11, 13; R 31, 66).

(3) As to Specification 5 Okuma: Not Guilty.

c. For the defense: (As to all specifications).

(1) Captain Noto stated he told Okuma to interrogate the prisoner of war. He (Noto) made a report about the prisoner of war to Sato in his tent. Sato didn't say anything. A little while later he was ordered by Sato, "Relay the message to Engineer Staff Officer to execute the prisoner." No one else was present nearby during the conversation. He stated he protested to Sato, and said it was not right to execute the prisoner of war when he was not a spy. Sato explained, "I have been in the mainland of Japan until

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recently and I have the latest knowledge on the handling of prisoners of war. Those American fliers who took part in the air raids of the mainland of Japan have been executed, and under the present circumstances that the American forces have landed in the western areas (Hollandia and Aitape), the execution of the Prisoner of War cannot be helped." He did not listen to his protest, and the conversation was closed. He was a staff officer, and if he had not followed out the orders of the commanding officer, he would have been sentenced to death under the Article, "Failure to Comply with Orders", in the Naval Penal Code. In the battlefield, insubordination is the heaviest offense of military personnel. With reference to the word "spy", he meant that it was wrong to execute a prisoner of war merely because he was a flyer; if he was a spy, he would be tried first, and if found guilty, would be executed. Okuma returned and gave him (Noto) the report of his interrogation. He (Noto) relayed to him (Okuma) the order from Sato, "Execute the prisoner." Yamamoto could have been present at the time. He (Noto) did not go to the execution ground. Okuma returned from the execution and reported to him the execution had been completed. He (Noto) reported this to Sato. He did not get a detailed report. He heard later that Odazawa had beheaded the flyer. Because of the critical condition existing at the time, he did not believe that there was anything else that could be done except for the commanding officer to execute the prisoner of war. Due to the existing turmoil, persons in the military forces could not be expected to act normally (Ex A). In December 1945, he told a Captain of the Australian Army investigating the case, that the prisoner of war had died of disease. He admitted this was a lie, but those were the orders of Sato, and he was still under his orders (R 88, 90). He never heard the flyer had been beaten until he was put in Sugamo. It was a complete surprise (R 92). Even had the flyer been tried, according to the military punishment regulations at the time, he could not have been sentenced to death (R 94). According to the Japanese code, there was no reason why the flyer should have been executed (R 96). He did not say to Sato, "I will have him (Okuma) dispose of the prisoner of war." (R 103). He did not say to Okuma, "Take the prisoner away and do away with him any way . . . you want." He did not say it was O.K. for Yamamoto and Okuma to shoot the prisoner of war. He did not recall the conversation he was alleged to have had with Maruyama, to the effect that the prisoner of war would be executed (R 104). He had never heard the flyer had been used for target practice until he came to Sugamo (R 105). He was now under sentence of twenty years for conviction of another war crime (R 111).

(2) Okuma stated Noto had directed him and Amenomori to conduct the interrogation of the prisoner of war. There were about fourteen or fifteen people at the interrogation. The prisoner's answers were not to the point and he struck him once with the open hand. When the interrogation was over, someone stepped up to the prisoner of war saying, "Let me strike him" and struck the prisoner of war about twice on the face. He did not put a stop to the striking of the prisoner of war. He reported to Noto the results of the interrogation. Since he had nothing to do at Headquarters, he thought he would clean his pistol. Sato said to Noto, "With reference to the disposition of the prisoner of war, Kairiru Island is already isolated, and we must assume there is no possibility of communication to the rear in the future or even at present. On this Island there is not a single personnel of the Kempeitai; there is not even a suitable place of confinement. Our food and medical supplies are extremely low, and for this reason, we ourselves are exposed to dangers. I do not suppose there is any other way out than to execute the prisoner of war. As a front-line commanding officer, I will take the full responsibility." Then Noto faced him and ordered, "Relay the message to Deck Officer Odazawa to dispose of the prisoner of war in the vicinity of the native cemetery at the beach." Yamamoto was with him at the time. Odazawa was in the vicinity so he gave him Sato's order, that was given him by Noto. He returned to Headquarters and continued cleaning his pistol. After completing the cleaning, he got up to return the pistol to his room, when he saw the prisoner of war being led away. He saw Odazawa with his sword. When Sato saw him (Okuma), rising with the pistol, he asked "Are you going to shoot the prisoner?"

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He (Okuma) replied, "It appears as though Odazawa is going to behead the prisoner." Sato said to him, "If the prisoner of war is going to be killed, why don't you test your pistol?" He had no thought of testing his pistol until Sato mentioned it. He (Okuma) answered, "I shall fire it and see." He left Headquarters and followed to the execution ground. When he arrived, the prisoner of war was standing at the hole with Odazawa. He (Okuma) was in a position about 15 to 20 meters from the prisoner of war. He said to Odazawa, "Let me shoot him before you behead him." Odazawa said, "If the bullet strikes the upper portion of the body, it will make it difficult to behead him, so aim any place below the hip." It was not his intention to kill the prisoner of war, but to test the fire power. He had already planned on aiming at his ankle. He nodded to Odazawa's request and aimed and fired at the ankle, but he noticed no blood. Yamamoto then stood beside him and said to the prisoner of war, "I will shoot you with my pistol." He did not know how many shots he fired; the prisoner of war remained standing. Fujihira then came from among the spectators and said, "You are a poor shot; this is the way to shoot." He fired one shot. The prisoner of war moved a little. Odazawa went up to the prisoner of war, pressed on his neck, and made him sit down. His (Okuma's) conscience would not permit him to watch the beheading, so he turned around and started back. He then glanced back and saw people looking in the hole; the prisoner of war was not on the edge of the hole. He returned to Headquarters (Ex B). He stated he had no recollection of giving Yamamoto an order to fire (R 117). At the interrogation, when he said that anyone who wanted to beat the flyer could do so, he was talking to himself (R 119). He stated his statement contained in his confession (Ex 11) that he was present during the time the enlisted men and others beat the flyer with sticks for about five minutes, was in error (R 120). He transmitted the order of Captain Noto to Odazawa (R 122). He had no recollection of asking Noto, "Can we shoot him?" and Noto replying, "O.K.", as stated by Kawada (R 123). He understood that when Sato said, "Why don't you shoot the prisoner of war", that was a direct order (R 124). During the pistol firing, he believed he was the highest ranking officer present (R 128). He did not stop Fujihira and Yamamoto from shooting because the commanding officer had frequently encouraged shooting of pistols for warrant officers and above; and they had knowledge and education to know what they were doing; he had no objection to their shooting (R 129). He did not give Fujihira or Yamamoto permission to fire; he remained silent; he was not at the scene when Odazawa executed the flyer (R 130). He could have stopped the beating at the interrogation had he wished to do so, but the thought did not occur to him (R 132). Odazawa was in charge of the details at the execution grounds; Odazawa, the deck officer, was the direct subordinate of the Vice Commander, Noto (R 134).

(3) Fujihira stated, during interrogation, Okuma said, "The prisoner of war is to be executed. Anyone who wishes to strike him, can do so." About ten persons struck the prisoner of war with their bare hands. He thought Okuma struck him twice. He followed the prisoner of war to the execution grounds. The hole was already dug; Odazawa came with his sword. The prisoner of war stood by the hole; he (Fujihira) was told to fire at the prisoner's knee. He believed Yamamoto fired the first shot. The bullet hit the knee, and he saw blood coming out. He (Fujihira) was next to fire. He mis-aimed intentionally. The bullet hit the dust two or three meters in front of him. Okuma fired next, and he believed he hit the prisoner's knee. Odazawa approached the prisoner of war and had him sit in front of the hole. He was given water; the prisoner's neck and Odazawa's sword were cleansed with water. Odazawa said, "I am also going to paradise later. You can wait for me by going ahead of me." He severed the neck with one blow of the sword, just leaving the skin. The body fell in the hole (Ex D). He (Fujihira) did not know who gave him the order to fire, but he thought it was Okuma (R 156). He stated he did not recall whether he struck the prisoner of war at the interrogation once or twice with the open hand; he might have struck him (R 158). Okuma was the senior at the execution. He (Fujihira) had his pistol with him when he

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went to the execution scene (R 159). He fired at the prisoner of war because he believed he received an order; he did not think he had asked for permission (R 160). Because of existing conditions, he did not believe the commanding officer had any choice but to execute the prisoner of war (R 163). He did not consider, at the time, whether the order to fire was legal or illegal, but he was given an order (R 164). He felt sorry for the prisoner of war and purposely missed him (R 165). The witnesses who stated he hit the prisoner of war, when he fired the pistol, were mistaken (R 166-170). He was not ordered to the scene of the execution (R 171).

(4) Yamamoto stated Noto ordered Okuma to conduct the interrogation. Okuma was assisted by Amenomori. After the interrogation, Okuma slapped the prisoner's face once or twice and stated to the onlookers, "Anyone who wants to strike the prisoner of war can do so." He believed three or four struck the prisoner of war with their hands. He did not strike the prisoner of war. Okuma reported to Noto on completion of the interrogation. Noto, facing Okuma and him (Yamamoto), ordered, "Take him in the direction of the beach and dispose of him." From this order, he felt he was to assist in the execution, however, he did not know the details of what he was to do. A short while after Okuma made the report to Noto, Okuma said to him, "Why don't you also fire the pistol?" He then knew the prisoner of war was going to be shot with the pistol. About 4:00 p.m., he saw the prisoner of war being taken toward the beach. He went to his billet, got his pistol and went to the execution grounds. The prisoner was standing by the hole. Okuma, Fujihira, and he were standing about ten meters from the prisoner of war. Odazawa approached and said, "Do not aim at any part of the body above the hip, because it would not be too good ... to cut off his neck; therefore fire at his legs." He had no intention of killing the prisoner of war, but since there was an order from Noto to dispose of him, he fired two shots, aiming at his legs. He was positive one shot missed the prisoner of war; the other shot may have hit the prisoner of war; he remained standing. Before he fired, he said in English, "I will shoot you with my pistol." Okuma and Fujihira fired one round each. The prisoner remained standing. Odazawa had the prisoner of war sit in front of the hole; he washed the prisoner's neck and his sword with water, and shouted in a loud voice, "I, ... Odazawa, ... am now going to behead the prisoner." He then beheaded him, and the body fell into the hole (Ex C). When Noto ordered Okuma and him to dispose of the prisoner of war, he did not know whether the prisoner of war was to be executed by a firing squad or some other method and he knew he was to take part in the execution. He got his pistol because Noto ordered it; and Okuma told him he was to fire his pistol. When he went to get his pistol, he intended to take part in the execution (R 141). The highest ranking officer at the execution was Okuma. Okuma could have stopped the firing. Odazawa suggested shooting the prisoner of war below the hip. He thought Okuma told him to fire first. He fired because he received such orders from Noto (R 143). Okuma said he thought it would be O.K. for him (Yamamoto) also to shoot the pistol. When he saw Odazawa with his sword, his intent to kill disappeared (R 144). It was his intention to assist or participate in a general way in the execution. Since he was taught to obey orders, he did not consider whether it was illegal or not to shoot the prisoner of war (R 145). The prisoner of war remained standing after all three shot at him, and he did not think he was hit (R 146). He fired because Noto had said to dispose of the prisoner of war. He got his pistol because he thought the execution was to be by pistol, and he fired because he did not want to return from the execution scene without obeying Noto's orders; therefore, he fired, aiming at his legs (R 149).

(5) Odazawa stated that about 2:00 p.m., Okuma came to him near the air raid shelter and ordered him, "Under orders of the Commanding Officer, carry out the execution of the prisoner." He did not mention the method of execution, whether by pistol, sword, or otherwise, nor was he told whether he was to use his subordinates to carry out the execution. He asked Okuma when and where the execution was to take place. Okuma answered, "The prisoner will be executed when the enemy planes become scarce and that will be around 4:00 p.m. As to the place, ask the Commanding Officer of headquarters sector." He went to

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Ushioji, the Commanding Officer of headquarters sector, and said, "I was ordered to execute the prisoner. Where shall it be carried out?" He answered, "Use the area in the vicinity of the cemetery on the farm." He then ordered his senior NCO to prepare the hole. Around 3:30 p.m., he (Odazawa) reported to Okuma, the hole was ready. Okuma said, "Take the prisoner to the cemetery." He (Odazawa) ordered his NCO to take the prisoner to the cemetery, as ordered. He then went to his billet and picked up his sword. On his arrival at the execution ground, Okuma said to him, "Behead him after the shots are fired." He gave the prisoner of war water, washed his neck, and said to him, "This cannot be helped because it is war. I am going to execute you under orders." Okuma was first to fire; then Yamamoto fired. The prisoner of war dropped to his knees; he went to the hole and with one stroke of his sword beheaded him. The prisoner of war fell into the hole. He left immediately (Ex E). Odazawa stated he was deck officer; Okuma was his immediate superior (R 174). He never told Kawada he would like to behead the flyer (R 175). The first time he knew that pistols were going to be fired was when Okuma told him at the execution (R 176). It was extremely painful for an executioner to follow orders, and it was with such a painful feeling that he beheaded the flyer (R 176). Okuma was the senior officer at the execution, and he thought he was commanding. He received his order from Okuma. He (Odazawa) was ordered to make all the arrangements as to the details of the execution, so he had his subordinates do it (R 181). He insisted that Exhibit No. 14 was not a correct statement, and for that reason he refused to sign it. Okuma definitely told him, personally, to execute the prisoner of war under orders of the commanding officer; he did not say why the prisoner of war was to be executed (R 182); he felt badly about the order, but was not in a position to protest (R 183). Prior to the shooting, he did not caution Yamamoto, Fujihira, or Okuma to shoot below the hips so that he could behead him. He took his sword with him to be prepared because Okuma did not tell him what method was to be used (R 185).

(6) The prosecution stipulated that, in his original signed statement in Japanese, Odazawa stated, "Staff Officer Okuma issued an instruction to the effect that the Commanding Officer has ordered that the prisoner of war be executed. This had been transmitted from Noto to Okuma to me." This statement did not appear in the English translation (Ex 14), which he refused to sign (R 192). It was agreed that the person named in the charge as "Odazawa" is the same person as "Otazawa" who signed Exhibit E (R 174).

4. Opinion:

a. Identity of the Accused. There are some variations in the titles of the accused as shown in the charges and in the evidence. Some of the accused were promoted subsequent to the time of the alleged offenses and have been referred to both by their former and later titles. However, all the accused have been definitely identified as those mentioned in the charges and specifications. The titles are descriptive only, and the variation is immaterial, since the rights of the accused could not possibly have been prejudiced thereby.

b. As to legal sufficiency.

(1) Okuma 1 and 2; Yamamoto 1; Fujihira 1. Okuma pleaded guilty to specification 1 and 2. There is an abundance of evidence that he not only caused, directed and permitted the beating of the prisoner of war during the interrogation, but that he personally beat the prisoner of war as well. He stated he was in charge of the interrogation and could have stopped the beating had he wished to do so, but the thought never occurred to him. Yamamoto told Kawada and Nagahara that he hit the prisoner of war at the interrogation. Fujihira stated he thought he struck the prisoner of war in the face one or two times. The evidence is legally sufficient to support the findings.

(2) Noto. The evidence establishes that Rear Admiral Sato, the Commanding Officer, 27th Special Naval Base Force, ordered Noto, his Chief of Staff, to have the prisoner of war executed and designated Odazawa as the

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executioner. Noto protested the order, well knowing that it was illegal, but was overruled by Sato. He felt he had no moral choice in the matter and was compelled to do as his superior had directed. Accordingly he transmitted Sato's order to Okuma to have Odazawa execute the prisoner of war. Noto had not ordered the beating of the prisoner of war at the interrogation, nor the target practice committed upon him prior to the decapitation. He was not present at the beating or the target practice, and said he had no knowledge of either until some time later when he was confined in Sugamo. He was not present at the execution. After the execution, he admitted he had ordered all to maintain silence concerning the execution, and if questioned, to state the prisoner of war had died of disease, but in so doing he was acting under Sato's orders. Sato had committed suicide, and no statement had been obtained from him prior to his death as to the part he played in the execution of the prisoner of war. However, the fact that Sato had ordered the execution was confirmed by other witnesses. Noto realizing that he had committed a crime in directing Okuma to carry out Sato's illegal order, pleaded guilty, hoping that his plea of superior orders would be considered by the Commission in mitigation of punishment. The evidence is legally sufficient to support the finding.

(3) Okuma 4. The evidence is clear that Okuma did order, cause, direct, and permit the unlawful killing of the prisoner of war. It is undisputed that he had received an order from Noto to execute the prisoner of war, the order which Noto had transmitted to him from Sato. Okuma was the senior officer present, and in charge of the proceedings at the scene of the execution. He could have prevented the killing had he chosen to do so. He knew the order was illegal but he dared not refuse to obey it. The plea of superior orders does not constitute a defense, but it may be considered in mitigation of punishment only. The evidence is legally sufficient to support the finding.

(4) Okuma 3; Yamamoto 2; Fujihira 2. Okuma, Yamamoto, and Fujihira are all charged with participation in the unlawful killing of the prisoner of war. All left for the execution scene with a common purpose to participate in the execution. All carried their pistols with them. At Headquarters, while the execution was being discussed, Okuma and Yamamoto were busy fixing their pistols; they seemed to be in good spirits because they were going to shoot the prisoner of war. Fujihira was not ordered to the scene of the execution; he went along voluntarily. Okuma directed the firing at the prisoner of war. All three fired; some hit; some missed; blood welled from the prisoner's body. Okuma stated he was the senior present and could have stopped the firing; he had no objection to Fujihira and Yamamoto firing; he did not stop the firing because, "the Commanding Officer had frequently encouraged shooting of pistols for Warrant Officers and above." When they had their fill of pistol firing, Okuma ordered Odazawa to behead the prisoner of war, which he did. It is clear that the three who fired participated in the killing; the shooting of the prisoner of war before the beheading was in accordance with the plan for the execution. All participated willingly either as principals or accessories; all aided or abetted. The shooting before the beheading was not a necessary step in carrying out the orders Okuma had received to execute the prisoner of war, although it may have been suggested by Sato. All took advantage of an opportunity to satisfy their sadistic desires to torture their victim, a human being, by using him for pistol practice before the final kill. The evidence is legally sufficient to support the findings.

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(5) Odazawa. That Odazawa was ordered to execute the prisoner of war there is no doubt. There is some evidence that his being ordered to do so may have been influenced by his volunteering to do so. He denies he was a willing participant, and he insisted that the duty assigned him was an extremely painful one. He stated he felt badly about the order but was in no position to protest. The events preceding the beheading belie the sincerity of his contentions. Everything was ready for the beheading, the prisoner of war was at the edge of the pit he had prepared for his burial, and he stood by with his sword. Okuma told Odazawa that before he decapitated the prisoner of war they wanted to do some pistol firing at him. Odazawa consented to the brutal acts, and told Okuma to have them shoot the prisoner of war below the hips at the lower part of the body, so as not to make the beheading difficult. Thereupon, several shots were fired at the prisoner of war by Okuma, Fujihira, and Yamamoto. Blood welled from the prisoner's body. The pitiful prisoner of war might have been spared these last moments of cruel torture had Odazawa seen fit to protest. The evidence is legally sufficient to support the findings.

c. The accused were ably represented by both American and Japanese counsel. They were familiar with their rights. They cooperated fully in their defense. All of the accused elected to testify in their own behalf. All were given opportunity to present witnesses in their own behalf. There is no evidence that any of the accused were insane or otherwise incompetent at the time of trial or at the time of the commission of the alleged offenses. Insanity was not an issue.

d. The Commission was legally constituted. The Commission had jurisdiction of the persons and the offenses. The sentences were authorized for violations of the laws of war. No errors injuriously affecting the substantial rights of the accused were committed during the trial. The record is legally sufficient to support the findings and the sentences imposed by the Commission.

5. Recommendations:

a. Findings. The findings of guilty of all specifications and charges should be approved.

b. Clemency. Many petitions of clemency were submitted to the Reviewing Authority in behalf of all of the accused by relatives, friends, and former associates of the accused. In general, they stress the excellent character and wholesome reputations of the accused in the past. They emphasize the point that any crimes which the accused committed were occasioned by the strict and mandatory compliance with superior orders required of all in the Japanese military and naval service. The petitions have been carefully examined and considered by the reviewer.

c. Sentences:

(1) Okuma. The accused well knew that orders had been issued for the execution of the flyer before he interrogated him. He received no orders to beat the prisoner of war; yet at the interrogation he struck him and invited others present to do likewise. He was present and in charge while the prisoner of war was beaten with hands, fists, wooden clubs about the face and body. After the interrogation when he took the prisoner of war

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out to be executed, he further displayed his fiendish nature by personally firing live ammunition at him and permitting and directing others to likewise torture him. Then he ordered the decapitation. The Commission sentenced the accused to death by hanging. Whereas capital punishment might well be justified for the heinous crimes the accused committed, it is believed that as a matter of policy, it should be reserved for those commanders who at the time of taking the life of another are in a position to exercise their power of command independently of any compulsion from higher authority. (Opinion Colonel Shaw cited in US vs. Nakamura et al). In the instant case the accused was ordered to execute the prisoner of war by his superior officer. He had no moral choice but to obey. For this reason, it is recommended that the death sentence be commuted to confinement at hard labor for life.

(2) Yamamoto and Fujihira. These accused participated in the beating of the prisoner of war at the interrogation. Later they were eager participants in the killing of the prisoner of war by firing their pistols at him before the decapitation. However, neither was in charge of the interrogation or the execution. They were encouraged to participate by Okuma, the officer in charge. Their culpability is not as great as that of Okuma, but nevertheless justice demands they be severely punished. The Commission sentenced each of these accused to confinement at hard labor for life. It is believed a sentence of twenty years each is adequate punishment for the crimes they committed, and it is recommended that their sentences be reduced accordingly.

(3) Odazawa. This accused was ordered to decapitate the flyer. He had no moral choice but to obey. He felt he had to comply with his orders. However, his apparent consent to and encouragement of the barbarous acts committed by his associates upon the helpless victim whose life he was about to snuff out, disclose a malignant nature. His culpability is not as great as that of those who actually did the firing. The Commission sentenced the accused to confinement at hard labor for life. It is believed that a sentence of ten years is adequate punishment for the crime he committed, and it is recommended that the sentence be reduced accordingly. In accordance with the established policy, owing to the length of time the accused has spent in confinement prior to date of sentence, it is recommended that two and one-half (2½) months of the sentence be remitted.

(4) Noto. There was no maliciousness on the part of this accused. He was the Chief of Staff of Admiral Sato, and transmitted the latter's order for the execution to Okuma. He knew the order was illegal; he objected thereto; he was overruled. He had no moral choice but to transmit the order. The accused was previously tried by an Australian Commission and convicted of a similar offense committed at the same place. For the offense of which the accused was convicted in the instant case, he should be punished. However, it is not believed any good purpose will be served by imposing additional confinement. It is recommended that the sentence be reduced to five years, and the unserved portion of confinement at hard labor be remitted.

d. The defense filed a motion for modification of the sentences in behalf of each of the accused. The motion has been carefully considered. It is recommended that, except as above indicated, the motion be denied.

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6. Action. Attached hereto are forms of action designed to carry into effect the above recommendations.

F. R. UNDRITZ
Lt. Col. Inf
Ass't. Staff Judge Advocate

Before consideration of the individual sentences, the following general remarks should be noted:

In no instance can it be said that the participants herein were not eager volunteers. The so-called orders in this case actually were nothing more than incidental authorizations. The evidence in the case clearly re-creates the scene surrounding and attending this tragic carnival. The word was passed by Noto the Chief of Staff (a tyro at such events as evidenced by a previous trial for a similar offense) that the flyer was to be killed.

Okuma staged the killing, permitting those of vindictive mind to beat the flyer pre-death. He asked for volunteers to kill the victim. He authorized shooting at him for practice. His own father, in a clemency petition, says that the death sentence was justified. In this opinion, the undersigned concurs.

The sentence of twenty years for Noto for participation in the proceedings which resulted in the killing is plainly inadequate. He volunteered to his commander to have the prisoner killed and told Okuma to do it. He ordered silence after the war and a false statement that the prisoner died of disease. His assertion of unavailing protest is not convincing in the face of the facts in evidence. Approval of the sentence is recommended.

The life sentences of the three other accused are likewise lenient.

Odazawa volunteered to behead the prisoner. He was so eager to accomplish the killing that he cautioned the pistoleers who were practicing shooting at the victim to shoot below the hips so that a fatal wound would not deprive him of his opportunity. The argument that his sentence should be reduced or even that it is adequate, where such argument asserts superior orders, does not find support in the facts. The so-called order was a mere license or authority to kill.

Approval of the life sentence is recommended.

Fujihara. Superior orders played no part in the actions of this participant. He showed his malice by beating the bound victim. He asked for and received permission for pistol practice against the victim's body and one shot went home. Regardless of encouragement by Okuma, he was sadistic and murderous. The life sentence, though inadequate, should be approved, since it cannot be increased.

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Yamamoto. His actions paralleled those of Fujihara. He was an eager volunteer. He announced that he was practicing and told the prisoner he would kill him. He advised the others to shoot below the knees. It is difficult to understand how a sentence less than the extreme penalty could have been adjudged under facts showing such a malignant spirit as that of this man. Approval of the life sentence is recommended.

Proposed alternate actions to implement these recommendations are attached.

ALLAN R. BROWNE
Lt Col JAGC
Army Judge Advocate

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